D.B. CIVIL SPECIAL APPEAL (WRIT) NO.280/2006.
In
S.B. CIVIL WRIT PETITION NO.5602/2003.

Ram Kishore and ors.
Vs.
Pratap and others

Date of Order:- October 25, 2007.

HON'BLE THE CHIEF JUSTICE MR.J.M. PANCHAL
HON'BLE MR.JUSTICE MOHAMMAD RAFIQ

Mr. Akhil Simlote for the appellants.

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By filing the instant appeal, the appellants who are original plaintiffs, have challenged the illegality of order dated March 5, 2004 rendered by the learned Single Judge in SB Civil Misc.Application No.73/2004 by which the prayer made by the appellants to extend time to enable them to appear before the trial court and to lead evidence, is rejected.

The appellants are original plaintiffs. They have filed suit for specific performance of the contract as well as permanent injunction against the respondents. On December 31 2002, the trial court framed necessary issues for determination and fixed the case to enable the appellants to lead evidence. The record shows that

on January 2 2003, the appellants did not examine any witnesses at all. Therefore, the trial court was required to adjourn the case to January 16 2003. On January 16 2003, the appellants did not examine the witnesses at all and, therefore, the right of the appellants to lead evidence was closed by the trial court. Feeling aggrieved by the said order, appellants invoked revisional jurisdiction of this Court by filing SB Civil Revision Petition No.256/2003. It was rejected by the learned Single Judge vide order dated August 18 2003 as not maintainable. Thereupon, the appellants filed SB Civil Writ Petition No.5602/2003 challenging the order by which their right to lead evidence was closed. The said petition came to be partly allowed by the learned Single Judge vide order dated November 13 2003. By the said order, the appellants were directed to appear before the trial court on November 23 2003 and the trial court was directed to give opportunity to the appellant to lead evidence on payment of cost of Rs.500/-. However, thereafter, the appellants filed SB civil Misc.Application

No.73/2004 with a request to the court to extend time to enable them to appear before the trial court to lead evidence. The said application has been rejected by the learned Single Judge vide order dated March 3 2004 giving rise to the instant appeal.

This court has heard the learned counsel for the appellants and taken into consideration the documents forming part of SB Civil Misc.Application No.73/2004.

The fact that inspite of the direction dated November 13 2003, the appellants could not appear before the trial court on November 25 2003, is not in dispute. It is also not in dispute that no time was prayed by the appellants to pay cost quantified by the High Court in SB Civil Writ Petition No.5602/2003. The record further shows that after filing the instant appeal, no steps were taken by the appellants for two weeks for early hearing of the same. As is evident, the right of the appellants to lead evidence was closed by the trial Court as early as on January 16 2003. Extension of the time to enable the

appellants to appear before the trial court and lead evidence would adversely affect early disposal of the suit.

Under the circumstances, this court is of the opinion that the order impugned in the appeal cannot be interfered with and the appeal which lacks merit deserves dismissal.

For the foregoing reasons, the appeal fails and is dismissed.

(MOHAMMAD RAFIQ), J. **(J.M. PANCHAL), CJ.**

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D.B. CIVIL MISC.STAY APPLICATION NO.951/2006.
In
D.B. CIVIL SPECIAL APPEAL (WRIT) NO.280/2006.
In
S.B. CIVIL WRIT PETITION NO.5602/2003.

Ram Kishore and ors.
Vs.
Pratap and others

Date of Order:- October 25, 2007.

HON'BLE THE CHIEF JUSTICE MR.J.M. PANCHAL
HON'BLE MR.JUSTICE MOHAMMAD RAFIQ

Mr. Akhil Simlote for the applicants-appellants.

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Since the appeal is dismissed vide order dated October 25 2007, the instant application for interim-relief does not survive.

Hence, the same is rejected.

(MOHAMMAD RAFIQ), J. **(J.M. PANCHAL), CJ.**

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